

V. ANDREW CASS
Nevada Bar No. 005246
PRISCILLA L. O'BRIANT
Nevada Bar No. 010171
LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
702.893.3383
FAX: 702.893.3789
e-mail: cass@lbbslaw.com
Attorneys for American General Life
Insurance Company of Delaware formerly
known as AIG Life Insurance Company

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

American General Life Insurance Company of
Delaware, formerly known as AIG Life
Insurance Company,

Plaintiff,

vs.

Leovigildo Emanuel Elena-Martinez, a minor;
Michael David Elena-Martinez, a minor;
Yesica and Rodrigo Higuera, individually and
as guardians of the minor children Leovigildo
Elena-Martinez and Michael Elena-Martinez;
Doe Individuals I-X; and ROE Corporations I-
X.

Defendants.

CASE NO. 2:12-CV-02026- LRH-VCF

MOTION TO FILE UNDER SEAL
EXHIBIT A TO STIPULATION FOR
DEPOSIT OF FUNDS INTO BLOCKED
ACCOUNT AND DISCHARGE OF
LIABILITY

Plaintiff American General Life Insurance Company of Delaware (AGLIC), by its attorneys
of record, LEWIS BRISBOIS BISGAARD & SMITH, respectfully petitions this Court for an
Order pursuant to LR-10-5(b) permitting the parties to file under seal Exhibit "A" to the Stipulation
for Deposit of Funds Into Blocked Account and Discharge Of Liability.

This Petition is based upon the pleadings and papers on file with this Court and the
following Memorandum of Points and Authorities.

///

///

///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **BACKGROUND**

4 AGLIC issued a Group Accident Insurance policy to Marriott International, Inc., which
 5 included accident death benefits for its employees. After the death of Juana Toledo, a Marriott
 6 employee, Yesica Higuera asserted claims on behalf of Leovigildo Elena-Martinez and Michael
 7 Elena-Martinez. As Juana Toledo was not married, any children are her beneficiaries under the
 8 Policy. AGLIC requested copies of the birth certificates of Leovigildo Elena-Martinez and
 9 Michael Elena-Martinez to establish that they were the children of Juana Toledo but these were not
 10 provided. AGLIC also requested copy of the Guardianship of Property or the Letters of
 11 Conservatorship for the Estate of Leovigildo and Michael - these documents were necessary before
 12 AGLIC could pay the monies to Yesica Higuera as absent such documentation, AGLIC would be
 13 exposed to double or multiple liability should Michael and/or Leovigildo submit claims upon
 14 reaching the age of majority.

15 AGLIC has now received copies of the birth certificates of Leovigildo Elena-Martinez and
 16 Michael Elena-Martinez, documenting that they are the children of Juana Toledo. The parties have
 17 also agreed that the policy benefits should be paid into a blocked trust account for each of the
 18 minor children. The parties' stipulation is filed concurrently herewith. The birth certificates of
 19 Leovigildo Elena-Martinez and Michael Elena-Martinez are attached as an exhibit to the stipulation
 20 to allow the Court to find that they are the children of Juana Toledo. However, Defendants prefer
 21 that the birth certificates are not made part of the public record.

22 **II.**

23 **LEGAL ANALYSIS**

24 LR 10-5(b) requires that papers filed with this Court under seal shall be accompanied by a
 25 motion for leave to file those documents under seal, and shall be filed in accordance with the
 26 Court's electronic filing procedures, giving directions as to how that process shall be accomplished.
 27 The rule further provides that all papers filed under seal will remain sealed until such time as the

28 ///

1 Court may deny the motion to seal or enter an order to unseal them, or the documents are unsealed
2 pursuant to Local Rule. *See id.* Documents filed under seal are not accessible to the public.

3 Under the circumstances of this case, even under the standards announced in *Kamakana v.*
4 *City and County of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006), there is no compelling
5 reason why the birth certificates of Leovigildo Elena-Martinez and Michael Elena-Martinez should
6 be made public. In *Kamakana*, the Ninth Circuit recognized that, historically, courts have
7 recognized a general right to inspect and copy public records and documents, including judicial
8 records and documents. Nonetheless, the *Kamakana* court also recognized that access to judicial
9 records was not absolute. The *Kamakana* court also wrote that resolution of a dispute on the merits
10 was at the heart of the interest in ensuring the “public’s understanding of the judicial process and of
11 significant public events.” Only if the documents to be sealed are attached to dispositive motions
12 need the party seeking the order meet the high threshold of showing that “compelling reasons”
13 support secrecy.

14 The document to which this petition is directed does not involve a dispositive motion under
15 Rule 12. Although the stipulation and order will result in disposition of this matter, making the
16 birth certificates part of the public record will not aid the public in understanding the judicial
17 process, nor is the context of these documents, the payment of policy benefits under an insurance
18 policy, a significant public event. The public has no need of the information which the birth
19 certificates contain. In fact, public knowledge of the private information of Defendants contained
20 therein could negatively impact Defendants and is against the public interest. The public interest
21 will best be served by ensuring that the information contained in the birth certificates remains
22 private.

23 24 CONCLUSION

25 As shown herein, good cause exists to warrant an Order from this Court pursuant to LR 10-
26 5(b) which will permit the parties to file under seal Exhibit “A” to the Stipulation for Deposit of
27 Funds Into Blocked Account and Discharge Of Liability; Order Thereon.

28 ///

1 WHEREFORE, Defendants respectfully request entry of the following orders:

2 1. An order granting the parties leave to file Exhibit "A" to the Stipulation for Deposit of
3 Funds Into Blocked Account and Discharge Of Liability; Order Thereon under seal;

4 2. Such Orders and further relief as this Court may deem necessary and proper in the
5 circumstances of this case.

6 DATED this 18th day of September, 2013.

7 LEWIS BRISBOIS BISGAARD & SMITH LLP

8
9
10 By /s/ Priscilla L. O'Briant

11 V. ANDREW CASS

12 Nevada Bar No. 005246

13 PRISCILLA L. O'BRIANT

14 Nevada Bar No. 10171

15 6385 S. Rainbow Boulevard, Suite 600

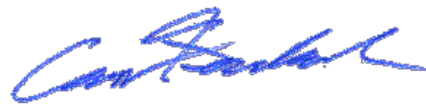
16 Las Vegas, Nevada 89118

17 Tel. 702.893.3383

18 Attorneys for Plaintiff

19
20 **IT IS SO ORDERED.**

21 Dated: October 2, 2013

22
23
24
25
26
27
28 

~~UNITED STATES DISTRICT COURT JUDGE~~
Magistrate

CERTIFICATE OF SERVICE

Pursuant to F.R.C.P. 5(b), I certify that I am an employee of Lewis Brisbois Bisgaard & Smith LLP and that on this 18th day of September, 2013, I did cause a true copy of the foregoing **MOTION TO FILE UNDER SEAL EXHIBIT A TO STIPULATION FOR DEPOSIT OF FUNDS INTO BLOCKED ACCOUNT AND DISCHARGE OF LIABILITY** to be served via electronic service by the U.S. District Court CM/ECF system to the parties on the Electronic Mail Notice List.

By: /s/ Priscilla L. O'Briant
An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP